

*United States Court of Appeals  
for the Second Circuit*



**BRIEF FOR  
APPELLANT**



**76-7401**

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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CANADIAN TRANSPORT COMPANY,

a Division of

MACMILLAN BLOEDEL (ALBERNI) LIMITED,

*Plaintiff-Appellant,*

—against—

IRVING TRUST COMPANY,

*Defendant-Appellee.*

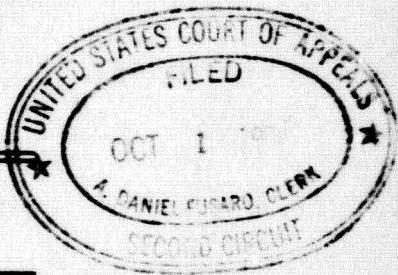
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APPEAL FROM UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**BRIEF FOR APPELLANT**

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UNITED STATES COURT OF APPEALS  
For The Second Circuit

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CANADIAN TRANSPORT COMPANY,  
a division of MacMILLAN BLOEDEL (ALBERNI) LIMITED,

Plaintiff-Appellant,

- against -

IRVING TRUST COMPANY,

Defendant-Appellee.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

BRIEF OF PLAINTIFF-APPELLANT

---

The Issues For Review

- 1) Whether Judge Werker's order of August 20, 1976 denying the motion by Plaintiff-Appellant Canadian Transport Company ("Canadian") for a preliminary injunction against Defendant-Appellee Irving Trust Company ("Irving Trust") pending trial of Canadian's suit for a permanent injunction should be reversed.
- 2) Whether this Court should issue a preliminary injunction against Irving Trust pending trial of Canadian's suit for a permanent injunction.

Statement

This is an appeal from the order entered on August

20, 1976 by Judge Werker of the U. S. District Court for the Southern District of New York (App. A35)\* denying Canadian's motion for a preliminary injunction enjoining Irving Trust from honoring any draft which was presented under its irrevocable letter of credit No. 012556 ("Letter of Credit") and which was predicated upon an alleged election by Irving Trust not to extend the expiration date of the Letter of Credit. This appeal is taken pursuant to 28 U.S.C. 1292 (a) (1) which gives the United States courts of appeals jurisdiction of appeals from interlocutory orders of the United States district courts refusing injunction.

#### The Prior Proceedings

On August 11, 1976, Canadian filed its complaint and moved by order to show cause to enjoin Irving Trust from honoring any draft which was presented to it under its Letter of Credit. (App. A2-10) A temporary restraining order was issued the same day by Judge Goettel, enjoining Irving Trust and providing for a hearing on August 17, 1976 of Canadian's motion for a preliminary injunction. The hearing on August 17th was held before Judge Werker with attorneys appearing for Canadian and St. Ioannis Shipping Limited (Irving Trust's customer, for whose account the Letter of Credit had been opened) in support of the motion and for Irving Trust in opposition to the motion. No testimony was presented to the court at the hearing, although counsel for both sides

\*References to pages in the Appendix will be indicated by "App. \_\_\_\_".

were heard. At the close of the hearing, which was brief, Judge Werker stated that he was denying Canadian's motion and directed Irving Trust's counsel to settle an order denying Canadian's motion on notice.

On August 20th Judge Werker signed an order (App.A35) denying Canadian's motion without making any findings of fact and conclusions of law. That same day, Canadian filed a notice of appeal (App.A36) and moved by order to show cause for an order pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure restraining Irving Trust from honoring any draft presented to it under its Letter of Credit pending the hearing and determination of Canadian's appeal. By memorandum endorsement on his order of August 20, 1976, Judge Werker granted a "stay pending appeal to the Court of Appeals on August 23, 1976." On August 23, 1976, Judge Meskill of this Court granted Canadian's motion "pending argument of said motion before a regular panel of this Court on September 14, 1976." After hearing counsel for both parties on September 14, 1976, a panel of this Court composed of Judges Oakes, Smith and Meskill, granted Canadian's motion and ordered that the appeal be expedited.

Facts\*

The Irving Trust Letter of Credit (App.A31) here involved was established on September 26, 1975 as security in order to obtain the release from arrest of the motorship FROSSO K ("Vessel"), which had been arrested in Tripoli, Lebanon, through proceedings in the courts of that country, by Lebanon Steel Mill Company ("Steel Mill"). Steel Mill claimed a maritime lien on the Vessel for alleged damages resulting from the Vessel's delayed arrival at Tripoli on its voyage from Australia with Steel Mill's cargo. In order to induce Steel Mill to release the Vessel from arrest, it was arranged that Irving Trust would issue the Letter of Credit in favor of Steel Mill for the account of its customer, Saint Ioannis Shipping Limited, owner of the Vessel ("Owner"), authorizing Steel Mill to draw at sight to the extent of \$225,000. upon presentation of a draft and

\*Most of the facts recited here are set out in the affidavits of Walter P. Hickey (App.A11) and Vito A. D'Andrea (App.A18).

Additional facts which became known after Judge Werker's order of August 20, 1976 were described in two affidavits of David A. Nourse submitted in support of Canadian's motion to this Court for an injunction pending appeal and in the affidavit of Herbert D. Zorn submitted on behalf of Irving Trust in opposition to Canadian's motion. In view of Canadian's contention that this Court is authorized to grant Canadian a further injunction pending trial (see infra, p.12), we request this Court to take judicial notice of these additional facts. We attach copies of one exhibit from the Nourse affidavit of August 20, 1976 and of the Zorn affidavit and its exhibits as an Addendum to this brief for the convenience of the Court. References to pages in the Addendum will be indicated by "Add.   ").

"A declaration to be issued by The Court in Lebanon concerning its judgment in the case of the damages alleged by the receivers to have been incurred in the alleged delay in the arrival by the ship Frosso X., with an English Language translation. Such translation must be certified true and correct and this certificate must be notarized.

OR

A settlement agreement signed by yourselves and L. Savon & Company Limited, P. O. Box 3856, Beirut, Lebanon acting as agents for the accountee agreeing to a settlement, which will be duly notarized."

The Letter of Credit contained an expiration date of September 24, 1976 and a provision for automatic extension of the credit for additional periods of one year from the expiration date up to September 24, 1978,

"unless we inform you via authenticated telex/cable or registered letter dispatched by us at least 30 days prior to the present or any future expiration date that we elect not to extend it."

In the event of Irving Trust's election not to extend the credit for an additional period the Letter of Credit provided as follows:

"In the event we elect not to extend this credit for an additional period until the final expiration date of September 24, 1978, you may draw hereunder. Such drawing is to be made by means of a draft on us at sight which must be presented to us before the then present expiration date of this letter of credit accompanied by your signed statement addressed to us reading as follows:

'We certify that the settlement of the damages we incurred has not been arrived at and this liability is still due to us. The proceeds of this draft will be retained and used by us to meet any payments which we may be required to make. In the event our liability is satisfied, we will refund to

you the amount of this drawing  
less any amounts paid.'"

The Letter of Credit also provided that it was subject to the Uniform Customs and Practice for Documentary Credits (1962 Revision) International Chamber of Commerce Brochure No. 222.

As back-up security for the Irving Trust Letter of Credit, it also was arranged that Canadian Imperial Bank of Commerce ("Imperial Bank") of Vancouver, British Columbia, would issue for the account of its customer Canadian a letter of credit in favor of Irving Trust for the account of Owner on essentially identical terms. (Add. 25 ).

Subsequently on September 29, 1975, Arab Bank Limited of Tripoli, Lebanon ("Arab Bank") advised Irving Trust that Steel Mill wished the Letter of Credit to be amended so that it would be confirmed by Arab Bank (App.A19). Irving Trust took up the requested amendment with its customer and by cable dated September 30 requested Arab Bank to add its confirmation to the Letter of Credit. (App.A19). It is not known at this time whether Arab Bank ever did add its confirmation, or, if it did so, in precisely what terms such confirmation was made.

As a result of the establishment of the Irving Trust and Imperial Bank letters of credit the Vessel was released from arrest by Steel Mill and continued its service pursuant to the contract of time charter party which existed between Canadian, as time charterer, and the Vessel's disponent owners. It is not known what, if any, steps were

thereafter taken by Steel Mill to establish its claim against the Vessel in the legal proceedings which it had commenced in the Lebanese courts.

On July 20, 1976, nearly ten months after these letters of credit had been issued and the Vessel released from arrest, Canadian, as a result of a misunderstanding with respect to the contents of the letters of credit, issued instructions to Imperial Bank not to extend its letter of credit in favor of Irving Trust beyond September 24, 1976, the expiration date. (App.A14, A32).

On July 21, 1976, Irving Trust telexed a branch or affiliate of Arab Bank which was located in Amman, Jordan, to advise Arab Bank through the "responsible area now handling business in your Tripoli office" that Irving Trust elected not to extend its letter of credit beyond September 24, 1976. (App.A33).

On July 28, 1976, Canadian realized that its instructions to the Imperial Bank had been issued as a result of a mistake and, at Canadian's request, Imperial Bank notified Irving Trust that it withdrew its notice, given on July 20, that Imperial Bank's letter of credit would not be extended beyond September 24, 1976. On July 29, after receipt of Imperial Bank's cancellation of its previous notice, Irving Trust sent a message "voiding" its July 21 notice that its letter of credit would not be extended and stating: "All terms and conditions unchanged." (App.A34).

On August 2, 1976, Irving Trust received a cable

from Arab Bank evidently sent on July 29, 1976, referring to Irving Trust's cable of July 21, 1976 concerning its election not to extend its letter of credit beyond September 24, 1976 and stating that, since Irving Trust elected not to extend, the beneficiary was drawing a draft in the amount of the letter of credit, which would be accompanied by a signed statement as required by the terms of the Letter of Credit. That same day, Irving Trust telexed Arab Bank repeating its previous message of July 29th voiding its prior election not to extend the Letter of Credit and advising that the,

"CREDIT DOES NOT ALLOW FOR CABLE REIMBURSEMENT AND AS SUCH YOUR DRAWING DOES NOT COMPLY WITH CREDIT TERMS STOP ADDITIONALLY AS CABLE RECEIVED ONLY AUGUST 2, 1976 WE CANNOT EFFECT PAYMENT TO YOU VALUE JULY 28 STOP IN VIEW FOREGOING PLEASE CABLE REPLY URGENTLY IF YOU WISH TO WITHDRAW YOUR PAYMENT REQUEST FOR \$225,000." (Add.5-6).

Irving Trust then took the position that although no draft or accompanying documents had been received or presented to it for payment, under the terms of its Letter of Credit it was absolutely committed to pay the draft if such documents conforming to the Letter of Credit terms were presented.

On or about August 11, 1976 Canadian filed its complaint in the U.S. District Court for the Southern District of New York on the basis of diversity jurisdiction and moved, by order to show cause, for a preliminary injunction restraining Irving Trust from honoring any draft drawn under the Letter of Credit which was predicated on an alleged election by Irving Trust not to extend the Letter of Credit beyond the present expiration date of September 24, 1976. A temporary restraining

order to this effect against Irving Trust was issued by Judge Goettel on August 11, 1976. (App. A9). However, it does not appear that any information concerning the temporary restraining order was given by Irving Trust to Arab Bank.

On August 18, 1976, after Judge Werker had indicated that he would deny Canadian's motion and Irving Trust had submitted a proposed order, Canadian submitted a counter-proposed order to Judge Werker which included a provision for a restraint upon Irving Trust pending Canadian's appeal from the order pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure. Again it does not appear that Irving Trust furnished any information to Arab Bank concerning either the proposed appeal or the proposed injunction pending appeal.

On August 19, 1976 Irving Trust received a telex from Arab Bank's affiliate in Amman, Jordan advising that all communications with Lebanon were disrupted at that time.

(Add. 13). That same day, Irving Trust telexed Arab Bank saying:

"Have received your documents which conform to terms credit and we stand ready to honor same. . ." (Add. 12).

It appears that Irving Trust was referring to Arab Bank's letter of July 28, 1976, (Add. 21) and the enclosed draft and statement purportedly executed by the president of Lebanon Steel Mill Co. S.A.L. (Add. 22 - 24).

On August 20, 1976, Judge Werker signed an order which did not contain the restraint requested by Canadian stating:

"A stay pending appeal is denied since it would in effect accomplish for plaintiff what was sought in the original motion."

In denying Canadian's motion for a preliminary injunction, Judge Werker failed to make any findings of fact or conclusions of law. (App. A35)

Canadian filed a notice of appeal on August 20 (App.A36) and moved by order to show cause to this Court for a further injunction against Irving Trust pending the hearing and determination of its appeal. Judge Werker later the same day granted a stay until August 23, 1976, pending appeal to the Court of Appeals. Also on August 20 Irving Trust attempted to draw under its back-up letter of credit with Imperial Bank and desisted only when advised of Judge Werker's stay order.\*

It was not until August 23 that Irving Trust advised Arab Bank that it had been "enjoined from effecting payment to you under a temporary restraining order." (Add.14). Irving Trust also advised Arab Bank to consider consulting its own counsel in New York. This message was repeated on August 26. (Add.17 ).

Subsequently, by cable dated September 7, 1976, Arab Bank's affiliate in Amman relayed a message from Arab Bank to Irving Trust dated August 26, 1976, reading in pertinent part as follows:

"\*\*\*YOUR CABLE 12TH INSTANT REYOUR L/C 012556 FAVOUR LEBANON STEEL MILL CO FOR DLRS 225000 STOP WE ALREADY PAID BENEFICIARIES AMOUNT AS PER YOUR CABLE 21ST JULY 1976 ELECTING NOT TO EXTEND L/C STOP BENEFICIARIES REFUSED YOUR PROPOSAL FOR NEW EXTENSION AND ARE INSISTING ON THEIR DECISION IN THIS RESPECT\*\*\*". (Add. 20).

\*Reply Affidavit of David Nourse 9/9/76 in Support of Motion for Stay Pending Appeal, p. 12.

POINT I

JUDGE WERKER'S FAILURE TO MAKE  
FINDINGS OF FACT OR CONCLUSIONS  
OF LAW REQUIRES A REVERSAL OF HIS  
ORDER BUT THIS COURT MAY REVIEW  
THE MERITS DE NOVO

The scope of review of the denial of a preliminary injunction is limited to whether the court below abused its discretion, Doran v. Salem Inn, Inc., 422 U.S. 922, 931-32 (1975) or committed a clear mistake of law, 414 Theater Corp. v. Murphy, 499 F2d 1155, 1159 (2d Cir. 1974), Exxon Corp. v. City of New York, 480 F2d 460, 464 (2d Cir. 1973). In the present case, Judge Werker denied Canadian's motion for an interlocutory injunction without making findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, which provides in pertinent part:

"In all actions tried upon the facts without a jury \*\*\*, the court shall find the facts specially and state separately its conclusions of law thereon \*\*\* and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action."

It is well established that a district court denying a preliminary injunction must comply with the provisions of this rule. Interstate Commerce Commission v. Cardinale Trucking Corporation, 308 F2d 435 (3rd Cir. 1962); Carey v. Carter, 344 F2d 567 (D.C. Cir. 1965); Bateman v. Ford Motor Company, 310 F2d 805 (3rd Cir. 1962). As the United States Supreme Court has stated;

"It is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction that there should be a fair compliance with Rule 52(a) of the Rules of Civil Procedure."

Mayo v. Lakeland Highlands Canning Company,  
309 U.S. 310, 316 (1940).

A reversal of Judge Werker's order does not however, in the circumstances of this case, require a remand. Findings are not a jurisdictional requirement of appeal and where an appellate court "can discern enough solid facts from the record to enable it to render a decision", it may do so. English v. Town of Huntington, 448 F2d 319, 321 (2d Cir. 1971) (per Friendly, J.). Since there was no trial or evidentiary hearing below and the district court's decision was based on pleadings and affidavits, the credibility of testimony is not at stake. Accordingly, this court is in as good a position as the court below to read and interpret the documents and, in the exercise of its discretion, should review the matter de novo. See San Filippo v. United Bro. of Carpenters & Joiners, 525 F2d 508, 511 (2d Cir. 1975); Dopp v. Franklin National Bank, 461 F2d 873, 879 (2d Cir. 1972).

POINT II

CANADIAN HAS MET ITS BURDEN  
OF DEMONSTRATING ITS RIGHT TO  
A PRELIMINARY INJUNCTION

It is the established rule in this Circuit that, to be entitled to a preliminary injunction, the plaintiff must make:

"\*\*\*\*a clear showing of either (1) probable success on the merits and possible irreparable injury or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief."

Sonesta Int'l Hotels Corp. v.  
Wellington Associates, 483 F2d 247,  
750 (2d Cir. 1973).

We respectfully submit that Canadian has met its burden on either the first or second branches of this test.

A. Issues Going To The Merits

Summary of Canadian's Position on the Merits

Canadian contends that, in connection with a guaranty letter of credit such as the Irving Trust Letter of Credit here involved, an election not to extend the letter of credit, prompted by a mistaken notice by the account party, can be cancelled and nullified prior to any action to its detriment in reliance on the election being taken by the beneficiary. Alternatively, Canadian contends that Irving Trust should be enjoined from complying with the terms of the Letter of Credit on the ground that its provisions respecting payment

to the beneficiary in the event of an election not to extend constitute an unenforceable penalty or on the ground that the Letter of Credit is ultra vires under New York law. Finally, Canadian contends that Irving Trust should be enjoined from making payment to Arab Bank pending determination of whether Arab Bank is a confirming bank and whether the documents presented to Irving Trust by Arab Bank conform to the terms of the Letter of Credit.

Irving Trust was entitled to void its election not to extend the Letter of Credit

The Letter of Credit here involved is not the ordinary commercial letter of credit used in international transactions as a means of providing for payment for goods. Rather, this Letter of Credit, which was established in favor of Steel Mill, as beneficiary, to provide security for an eventual judgment in its favor by the Lebanese courts or a settlement of its claim against the Vessel, is one of a new breed variously described in banking circles as a "Stand-by Letter of Credit" or a "Guaranty Letter of Credit". Harfield, Bank Credits and Acceptances, (5th ed. 1974) p. 32. See for example the comment by Verkuil, "Bank Solvency and Guaranty Letters of Credit", 25 Stan. L. R. 716, 717 (1973):

"In the last decade or so,...the adaptability of letters of credit has taken on a new meaning as they increasingly have been used as security devices in connection with transactions not involving the sale of goods, either international or domestic. The letter of credit now serves as a form of security for such diverse purposes as insuring real estate and shipbuilding construction loans and supporting the issuance of commercial paper; it even appears in plastic form as a bank

credit card. Such diverse forms of the letter of credit perform the functions of guaranties (broadly defined) and are referred to collectively as "guaranty letters of credit."

The creation of new uses for the letter of credit is the result of the "ingenuity of bankers" and the elastic nature of letters of credit. However, the creativity of the moment has obscured the fact that these new uses also entail new risks and different assumptions from those associated with the traditional letter of credit in the sale of goods context. In acquiring the functions of guaranties and acceptances the letter of credit transaction unavoidably has become subject to a whole series of changed calculations." (Emphasis added)

Several cases have been decided involving such guaranty letters of credit. See National Surety Corp. v. Midland Bank & Trust Company, 408 F. Supp. 684 (D. N.J. 1976), Fair Pavilions, Inc. v. First Nat'l City Bank, 19 N.Y.2d 512, 281 N.Y.S.2d 23 (1967); Fidelity Bank v. Luthern Mutual Insurance Co., 465 F2d 211 (10th Cir. 1972); Victory Carriers, Inc. v. United States, 467 F2d 1334 (Ct. Cl. 1972); Barclays Bank D.C.O. v. Mercantile National Bank, 481 F2d 1224 (5th Cir. 1973). Letters of credit of this type usually enumerate various conditions which must be satisfied before a right to payment of the proceeds of the letter of credit matures.

While the Letter of Credit is governed by the Uniform Customs and Practices for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222, this code nowhere deals with the precise issues involved here. Nor does the Uniform Commercial Code, though not strictly applicable, provide any guidance. However, it is well established that "the same general principles which apply to other contracts

in writing govern letters of credit." Venizelos, S.A. v.  
Chase Manhattan Bank, 425 F2d 461 (2d Cir. 1970); Fair Pavilions,  
Inc.v. First National City Bank, 24 A.D.2d 109, 264 N.Y.S.2d  
255 (1965), rev'd on other grounds, 19 N.Y.2d 512, 281 N.Y.S.2d  
23 (1967). Thus the basic issue is one of contract law.

In the case at hand, the Irving Trust Letter of Credit was designed as security for the eventual payment of (a) a judgment, if any, recovered by Steel Mill in the suit it brought in Lebanon against the Vessel; or (b) the settlement of the dispute. In the event neither of these conditions were fulfilled, the beneficiary would be entitled to draw under the Letter of Credit only if Irving Trust exercised its right to allow the Letter of Credit to expire by electing not to renew it. Analyzed in this light, the Letter of Credit was a contract conferring several rights: the right in the beneficiary to draw under the Letter of Credit upon satisfying the conditions relating to the establishing of its right to payment of its claim and a right in the issuing bank to terminate the Letter of Credit by electing not to extend it for another term of one year. Once Irving Trust exercised its right by electing not to extend the Letter of Credit, it created in the Steel Mill the power to (a) terminate the Letter of Credit by drawing under it pursuant to its terms or (b) allow it expire without drawing under it before the then present expiration date. The problem presented by this case results from Irving Trust's revocation of its

original election not to extend the Letter of Credit. The issue to be decided is whether, in the face of such a revocation and reinstatement of the security for another year, the beneficiary was still entitled to draw under the letter of credit.

In Voss Bros. Mfg. Co. v. Voss, 157 F2d 263 (8th Cir. 1946), a contract for the purchase and sale of stock provided that, if before closing the deal, the buyer should make a demand for a reduction of price, the rejection of that demand by the seller should make the contract void. When such a demand was made, the seller had only a choice between accepting and rejecting it. The court ruled that a demand for a reduction in the price had been made and that the seller had rejected that demand. After the rejection, the buyer attempted to withdraw its demand for a reduction in price. The court stated "that withdrawal of the tender of full performance by the appellant [buyer] after the contract by its terms had ceased to exist, obviously came too late". 157 F2d at 267. Professor Corbin in discussing this case states:

"\*\*\*the buyer would have the power to withdraw his demand before the seller either accepted or rejected it, but not afterwards."

1A Corbin on Contracts, (1964) §265, p. 532.

Whereas in Voss, the buyer withdrew his demand for a reduction in price after the seller had already rejected it and thus terminated the contract, it is Canadian's position in this case that Irving Trust's notice to Arab Bank of July 29, cancelling its previous election not to extend the letter of credit, was effective to void the previous election not

to extend the Letter of Credit if received prior to any action to its detriment by the beneficiary in reliance on the election.

Irving Trust contended below that revocation of its election not to extend the letter of credit was essentially an attempted amendment of the Letter of Credit. As such, it argued the revocation required consent of the beneficiary. (App. A25). Irving Trust's interpretation of the letter of credit is overly mechanical and ignores its basic purpose. As the New York Court of Appeals has indicated in its opinion in Fair Pavilions v. First National City Bank, supra, a guaranty letter of credit must be interpreted sensibly in light of the intention of the parties. There the court found it unreasonable to interpret a letter of credit established to secure payments under a construction contract as permitting cancellation by means of an unspecific affidavit in the conclusory form, "One or more of the events described in Clause XV. . . have occurred," when other clauses in the letter of credit indicated that the parties intended that an alleged default be specifically stated so as to enable the beneficiary to cure it.

Here, the purpose of the Letter of Credit was to provide security to Steel Mill for its claim in lieu of the Vessel. So long as the security itself remained in effect and unimpaired, there was no need for Steel Mill to consent to Irving Trust's revocation of its election not to extend. The effect of this revocation was to reinstate the Letter of Credit for another year, thus returning the matters to exactly the same position as before without any prejudice

to the Steel Mill's right to eventual satisfaction of any judgment or settlement in its favor.

Rather than an "amendment", requiring consent of the beneficiary, Irving Trust's action in revoking its previous election was under established principles of contract law merely an exercise of a power implied in the letter of credit contract. As such, Irving Trust was entitled to act so long as it did so prior to any action in reliance to its detriment by the beneficiary. Since the purpose of the Letter of Credit was security, the maintaining of that security through reinstatement of the Letter of Credit would seem to have foreclosed any possible detriment to the beneficiary. In any event the existence of any such detriment would be an issue for trial.

The provisions of the Letter of Credit permitting payment to Steel Mill prior to its having established its claim constitute an unenforceable penalty

As an alternative to its arguments concerning the voiding of the election not to extend and reinstatement of the Letter of Credit for another year, Canadian contends that the provision in the Letter of Credit allowing Steel Mill to draw the full \$225,000 by merely certifying that "the settlement of the damages we incurred has not been arrived at" should be void as in effect awarding the beneficiary an unenforceable penalty for a breach of contract.

It is a well settled principle of contract law that "agreements to pay fixed sums plainly without reasonable relation to any probable damage which may follow a breach

will not be enforced." Kothe v. R. C. Taylor Trust, 280 U.S. 224, 226 (1930); Priebe & Sons v. United States, 332 U.S. 407, 413 (1947); Ogden Development Corp. v. Federal Ins. Co., 508 F2d 583 (2d Cir. 1974); Restatement of Contracts, §339 . (1) (1932).

This principle applies equally to penal bonds and to money deposited as security for performance of a contract.\* New York law is fully in accord with these principles. See City of Rye v. Public Service Mut. Ins. Co., 34 N.Y.2d 470, 358 N.Y.S.2d 391 (1974).

That the strictures against penalties apply with even greater force to guaranty letters of credit has been noted in "Recent Extensions in the Use of Commercial Letters of Credit," 66 Yale L.J. 902, 916 (1957):

\*Restatement of Contracts,

**S339(2)**

"An undertaking in a penal bond to pay a sum of money as a penalty for non-performance of the condition of the bond is enforceable only to the extent of the harm proved to have been suffered by reason of such non-performance, and in no case for more than the amount named as a penalty, with interest."

**S340**

"A sum of money or other property deposited by a promisor as security for performance by him and against loss to the other party, to be forfeited in case of breach, may be either a penalty or liquidated damages in accordance with the rule stated in S339(1) .

"Like the penal bond, the letter of credit designed to compensate a beneficiary for a contractual breach imposes a duty upon a third party to pay a fixed sum to a promisee in the event of a failure of performance. Yet, the beneficiary of such a letter of credit enjoys an important advantage over the obligee of a penal bond: the obligee to collect must sustain the burden of proving at trial a breach of contract and the resulting injury, while the beneficiary may obtain any amount up to the designated sum merely by alleging to the bank a failure of performance and the extent of his damage. Thus, the judicial scrutiny which accompanies the modern penal bond is not found in the letter of credit mechanism. But a court might be asked to intervene if a bank, acting in its own interest or at the request of the customer, refused payment to the beneficiary on the ground that the letter of credit awarded a promisee an unenforceable penalty for a breach of contract. The question of a penalty might also be raised if the customer sought to enjoin payment by the bank... Moreover, the customer might sue the beneficiary to recover sums which the bank had paid, alleging that no breach had occurred or, if there were a breach, that the amount collected from the bank far exceeded actual damage.

The traditional judicial hostility to penalties in the law of contract would seem to constitute a potential infringement upon the protection enjoyed by a beneficiary, when a letter of credit is established as a source of compensation for unsatisfactory performance. If a bank refused to pay the beneficiary, asserting that the instrument authorized a penalty, a court would undoubtedly be indifferent to the fact that the promisor had voluntarily provided the irrevocable letter of credit as security for his own performance. The proscription against penalties has long been recognized as a deviation from the principle of freedom of contract, founded upon overriding considerations of public policy. Moreover, the penalty aspect of the letter of credit mechanism is magnified by the fact that the promisee is relieved of proving not only the extent of his damage but also that the contract was actually breached."

(emphasis added)

In the case at hand, the beneficiary, Steel Mill, has obtained the full amount of its claimed damages without having had to prove (1) that the alleged delayed arrival of the Vessel on the voyage from Australia with Steel Mill's cargo constituted a breach of contract under the bill of lading or charter party covering the voyage or (2) that the sum of \$225,000. represents a valid measure of the damages it is entitled to recover as a result of the alleged contractual breach.\* As discussed infra this poses a threat of serious, irreparable damage to Canadian since, under the backup letter of credit arrangement, Canadian is obliged to reimburse Irving Trust for any payment to the beneficiary. (Add.A25)

Now that Steel Mill has obtained the full amount of its claimed damages it has no incentive to press its suit to justify retention of that sum. Thus, in an eventual suit for restitution in Lebanon, Canadian would have the burden of proving that Steel Mill was not damaged to the extent of \$225,000, certainly an unfair shifting of the burden of proof which could very well preclude recovery by Canadian.

But most serious of all, Canadian can have no assurance that Steel Mill will hold the security fund in escrow

\*On the available facts, it seems extremely unlikely that Steel Mill would be able to prove a breach of any contract of carriage. Further the damages claimed appear to be for loss of market which would be in the nature of consequential damages, not recoverable by reason of lack of foreseeability. Hadley v. Baxendale, 9 Ex. 341, 156 Eng. Rep. 145 (Ct. Exchq. 1854).

and proceed to obtain a determination of its claim against the Vessel. Steel Mill's statement is merely that:

"The proceeds of this draft will be retained and used by us to meet any payments which we may be required to make.

In the event our liability is satisfied, we will refund to you the amount of this drawing less any amounts paid." (Add.24).

By these terms, Steel Mill may well consider that it is authorized to use the proceeds to meet any payments it decides are necessary to make itself whole.

The punitive aspect of this arrangement is further accentuated by the fact that Canadian has no contract or previous business relations with the Steel Mill other than the Letter of Credit. Steel Mill's claim lies not against Canadian but against the Vessel, of which Canadian is merely a time charterer. The voyage under which the Steel Mill's claim arose resulted from contracts concerning the Vessel made by two sub-charterers, namely Himoff Maritime Enterprises Ltd., (a concern which went into bankruptcy here in New York last year) and Meth & Company, a company which is entirely unknown to Canadian. The failure of these two companies to resolve the claim by the Steel Mill against the Vessel resulted in its arrest in Tripoli and made it necessary for Canadian and Owner (Irving Trust's customer) to obtain the release of the Vessel by providing Steel Mill with alternative security under the Letter of Credit. Under the circumstances Canadian is in no position, as a result of business relations or other such leverage, to induce the beneficiary to return the security fund. Only through Irving Trust's being enjoined from making payment under the letter of credit can Canadian

avoid substantial loss and damage.

For all of these reasons, we submit that a serious issue to be decided in the litigation of this action is whether the drawing down provision of this Letter of Credit should be held to constitute a penalty for breach of contract which is unenforceable as a matter of public policy.

The Letter of Credit may be ultra vires under New York law

In a recent decision, the United States District Court of New Jersey in National Surety Corp. v. Midland Bank & Trust Company, 408 F. Supp. 684 (1976) held that an irrevocable letter of credit (similar in many respects to the Irving Trust Letter of Credit) which was not valid for longer than a year but rather was automatically renewable from year to year was void and unenforceable more than a year after its issuance. The ground for this holding was that the pertinent New Jersey statute, N.J.S.A. 17:9 A25(3) withheld power from banks to issue letters of credit valid for more than a year from the date of issuance. This case is of particular significance to this action since, as the Court noted, the New Jersey statute differs in only immaterial detail from New York Banking Law §96(2) (McKinney 1975) after which it was apparently patterned.\*

\*N.J.S.A. 17:19A-25 provides in part:

"[E]very bank shall, subject to the provisions of this act, have the following powers, whether or not such powers are specifically set forth in its certificate of incorporation \*\*\*

(3) to issue letters of credit authorizing holders thereof to draw drafts upon it or its correspondents at sight or on time not exceeding one year; . . ."

Neither the New York nor the New Jersey statute provisions concerning time limits on letters of credit had previously been construed by any Court. However, the New Jersey District Court was influenced by the fact that New Jersey's Department of Banking took the position that the words 'not exceeding one year' applied to the whole subsection, including letters of credit. 408 F. Supp. at 691, n. 12.

The District Court also noted that one article, Verkuil, "Bank Solvency and Guaranty Letters of Credit," supra, at 730, n. 73 has construed New York's Banking Law §96(2) to apply its one-year limitation to letters of credit. Verkuil states in that footnote that New York's Superintendent of Banks asserted this illegality as a ground for not honoring the claim of the United States Commodity Credit Corporation under 53 guaranty letters of credit in the Intra Bank liquidation in 1966.

The letter of credit at issue in National Surety Corp., supra, is strikingly similar to Irving Trust's Letter of Credit. In view of this similarity in the terms of the

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N.Y. Banking Law §96(2) (McKinney 1975) provides in pertinent part:

"Every bank and trust company shall, subject to the restrictions and limitations contained in this Chapter, have the following powers:  
\*\*\*

2. To accept for payment at a future date drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time not exceeding one year."

letters of credit and the similarity in New Jersey statute 17:9A25(3) and New York Banking Law §96(2), Canadian submits that a significant issue to be decided in the eventual litigation of this action concerns whether Irving Trust's letter of credit should be deemed void and unenforceable under New York Banking Law §96(2).

A determination should be made as to whether Arab Bank is a confirming bank

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It appears from the available evidence that Steel Mill requested that the Letter of Credit be amended to provide for confirmation of the credit by Arab Bank. (App. A19) Further Irving Trust authorized the requested confirmation by cable to Arab Bank of September 30, 1975. (App. A30). However there is no indication, by documentary evidence or otherwise, that Arab Bank ever did, in fact, actually add its confirmation to the Letter of Credit, or if it did, in what precise terms it did so. The Uniform Customs and Practice for Documentary Credits which governs this Letter of Credit states:

"Article 3

\*\*\*

An irrevocable credit may be advised to a beneficiary through another bank without engagement on the part of that other bank (the advising bank), but when an issuing bank authorizes another bank to confirm its irrevocable credit and the latter does so, such confirmation constitutes a definite undertaking on the part of the confirming bank either that the provisions for payment or acceptance will be duly fulfilled or, in the case of a credit available by negotiation of drafts,

that the confirming bank will negotiate  
drafts without recourse to drawer."  
(Emphasis added)

The Uniform Commercial Code, although not strictly applicable here, has a similar provision dealing with confirmation of a letter of credit, which reads:

"[A] confirmation must be in writing  
and signed by the confirming bank."

U.C.C. §5-104(1)

Carl W. Funk in "Letters of Credit: UCC Article 5 and the Uniform Customs and Practice", 82 Banking Law Journal, 1035, 1050 (1965), contends that the two codes are essentially similar on the subject of confirmation:

"Although the provisions of the Code [UCC] and those of the Uniform Customs and Practice concerning advices and confirmation of credits differ somewhat in their language, the substance of the provisions appear to be similar, and there seems no likelihood of conflict between them."

From the above, it is therefore apparent that under the Uniform Customs and Practice the confirming bank must evidence its confirmation by a writing signed by it.

We submit that the issue as to whether Arab Bank has actually confirmed the letter of credit has yet to be decided. That such an issue is important is obvious, since unless Arab Bank had actually confirmed the letter of credit it would not have been entitled to pay out the proceeds of the Letter of Credit to the beneficiary, and it follows from this that it would not be entitled to reimbursement from Irving Trust.

Furthermore, if Arab Bank never added its confirmation to the letter of credit, then clearly the operative

date to determine when a valid presentation of the draft occurred, (ignoring for the moment the issue of nonconforming documents, infra) would be August 18th or 19th when Irving Trust received the draft and accompanying statement. It is therefore conceivable that prior to that time Arab Bank had received notice of Irving Trust's voiding of its election not to extend the Letter of Credit given in its telex of July 29 and thus the Letter of Credit would have been reinstated prior to any presentation of a draft on Irving Trust.

A determination should be made as to whether Arab Bank paid against conforming documents

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A fundamental principle governing letters of credit is that "the beneficiary must strictly comply with the terms of the credit to compel performance by the bank." Harfield, Bank Credits and Acceptances, supra at p. 73. The classic statement of the rule was made in an English decision, Equitable Trust Company of New York v. Dawson Partners, Ltd., 27 Ll.L.R. 49 (H.L. 1926):

"There is no room for documents which are almost the same, or which will do just as well."

The issue there was whether under a confirmed letter of credit the requirement of presentation of a "certificate of quality to be issued by experts who are sworn brokers" (emphasis added) was complied with by the presentation of a certificate of quality issued by a single expert who was a sworn broker. The issuing bank paid the proceeds and then sought reimbursement from the defendants. The court

concluded by a majority of four to one that because the documents tendered were not exactly the documents which the defendants had promised to take up, they were right in refusing to take them.

The rule is the same under New York law. Laudisi v. American Exchange Nat. Bank, 239 NY 234, (1924); Lamborn v. Lake Shore Banking & Trust Co., 196 App. Div. 504 at 507, 188 NYS 162 at 164, aff'd, 231 N.Y. 616, (1921)\*; Dixon, Irmaos & Cia. Ltd. v. Chase Nat'l Bank, 144 F.2d 759, 762 (2d Cir. 1944), cert. denied 324 U.S. 850 (1944); Venizelos, S.A. v. Chase Manhattan Bank, 425 F.2d 461 (2d Cir. 1970).

This principle applies equally to "guaranty" letters of credit. See for example Harfield's comment,

"When such letters of credit ["guaranty"] call for some written representation to accompany the demand for payment as is normally the case, the bank's duty to examine those representations should be equated with its duty to examine documents under a conventional commercial credit..."

Harfield, Bank Credits and Acceptances, supra, at p. 71, n. 1.

The issue of non-conformity of a "representation" required under a guaranty letter of credit was decided by the New York Court of Appeals in Fair Pavilions, Inc. v. First National City Bank, 19 N.Y.2d 512, 281 N.Y.S.2d 23 (1967). There a letter of credit was issued to cover scheduled payments under a construction contract. It provided for can-

\*"A party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under which the credit is to become available, and, if he does not, and the bank refuses to honour his draft, he has no cause of action against the bank."

cellation if the account party submitted an affidavit to the issuing bank stating that one or more of the events of default specified in the construction contract had occurred. The account party submitted an affidavit stating "one or more of the events described in clause XV. . . have occurred." The Court of Appeals held that the statement did not conform to the intended requirements of the letter of credit in that it did not specify the particular defects so that they might be cured.

In this case, despite Irving Trust's apparent assumption that the documents presented were in order, (see Add.12) the draft and statement are signed by a company with a name different from that of the beneficiary (Add.22) ("Lebanon Steel Mill Co.,S.A.L." rather than "Lebanon Steel Mill Company, Tripoli, Lebanon" as indicated on the Letter of Credit) and the statement (Add.24 ) is not precisely as required by the Letter of Credit (The statement omits the word "we" from its reference to "the damages [we] incurred". Of course the whole point of the Letter of Credit was to provide security for the damages incurred by the beneficiary, not some other company. ) Furthermore, in view of the ambiguous language in the statement,

"The proceeds of this draft will be retained and used by us to meet any payments which we may be required to make",

Canadian is justified in its concern as to exactly whose damages are being asserted.

While these discrepancies may have seemed minor to Arab Bank which has apparently paid the draft, the caveat

of the House of Lords in Equitable Trust Company of New York

v. Dawson Partners, Ltd., supra, is appropriate to note here:

"There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad which knows nothing officially of the details of the transaction thus financed, cannot take it upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk."

For all of these reasons, we submit that an issue to be determined at the trial of this action is whether Arab Bank wrongfully paid the proceeds of the Letter of Credit and is therefore not entitled to reimbursement from Irving Trust.

### **B. Irreparable Injury and Balance of Hardships**

The detriment to Canadian inherent in Irving Trust's insisting that it should pay over the entire security fund of \$225,000 to the beneficiary in Lebanon despite its own "voiding" of the election not to extend and its continuation of the Letter of Credit for a further term is obvious. Lebanon is currently in the middle of a civil war. There has been a very substantial disruption of society and business and probably of the country's legal system as well. It would seem evident that the Courts do not function well, if at all, in the midst of machine gun and artillery dueling or the sort of terrorist activities which are almost daily reported in the press.

This civil disruption in Lebanon affects the present case in two ways. First, it probably explains why Steel Mill has insisted on drawing under the Letter of Credit rather than agreeing to reinstatement of the security for another year. Clearly it would have been difficult for Steel Mill to proceed with its case in the Lebanese courts in order to obtain a determination and judgment that the Vessel was liable for the alleged losses resulting from late arrival. Under these circumstances, the prospect of obtaining the security fund without being obliged to proceed with its case must seem very attractive for Steel Mill.

Second, in view of the civil disruption in Lebanon, the prospects of Canadian's being able, through litigation in Lebanon, to enforce Steel Mill's promise to retain the security

fund and refund any amount in excess of the adjudicated or settled value of its claim are extremely uncertain. We submit that if Irving Trust is not enjoined from paying out the security fund, it is very likely that Canadian will lose the entire \$225,000 without any real chance of making a recovery from the beneficiary in Lebanon. This would result in serious and irreparable damage to Canadian.

On the other hand, the harm, if any, to Irving Trust is, at its worst, minimal. Irving's main concern throughout these proceedings has been the potential damage to its reputation for credit-worthiness as a result of the delay in failing to pay under this Letter of Credit. But obviously Irving Trust has only been prevented from paying as a result of the restraining order issued below and the stay granted by this Court. Thus Irving Trust has a complete excuse to explain its failure to pay Arab Bank. Also, as discussed supra, Irving Trust is entitled to refuse payment to Arab Bank on the ground that Arab Bank paid the draft against non-conforming documents.

Irving Trust has contended that Canadian was not entitled to an injunction because Canadian had an adequate remedy at law against Irving Trust if it should wrongfully pay a draft under the Letter of Credit. This contention is overly simplistic. Different standards apply in judging Irving Trust's obligation to pay under the Letter of credit before the payment is made and after the payment is made. A crucial issue here concerns the legal effect of Irving Trust's voiding of its previous election not to extend the

**Letter of Credit.** On this issue, Irving Trust interprets the Letter of Credit as prohibiting a cancellation of its notice without the consent of the beneficiary. Although letters of credit are to be strictly construed, if there is an ambiguity, a "reasonable" reading of its terms will protect the bank. Banco Espanol de Credito v. State Street Bank and Trust Company, 385 F2d 230 (1st Cir. 1967). Therefore, given the test of "reasonableness" it is extremely unlikely that, in an action against Irving Trust after payment has been made, Canadian would be able to establish that Irving Trust acted "unreasonably" in its interpretation of the legal issue as to whether its election not to extend the letter of credit could be cancelled without the consent of the beneficiary. On the other hand, prior to any payment by Irving Trust the standard for judging Irving Trust's obligation to pay is not one of "reasonableness" but what legal conclusions the facts demand. Irving Trust indicated by its telex of August 19 (Add. 12) to Arab Bank its willingness to honor the draft it has received from Arab Bank. Indeed, on or about August 20, 1976 Irving Trust attempted to draw under its back-up letter of credit with Canadian Imperial Bank and desisted at that time only when "stayed" by this Court from paying under its letter of credit. It is therefore clear that, unless enjoined, Irving Trust intends to pay out the proceeds of the Letter of Credit to Arab Bank, and would later assert, in a suit by Canadian for damages, that it acted "reasonably". If sustained in this position, Canadian would

lose its suit for damages although, if the same issues were to be decided before payment, it is Canadian's contention that they would be resolved in its favor and against payment.

In addition, Irving Trust has contended that this injunction affects the rights of absent parties, Steel Mill and Arab Bank, (App. A 26) a fact which impliedly should prevent the granting of this injunction. However, Irving Trust has informed Arab Bank of the injunction issued by this Court and advised Arab Bank that it may wish to consult its own counsel in this matter. (Add. 15) If thereafter, Arab Bank chooses not to intervene, it can safely be presumed that it does not feel it has a sufficient interest in this matter to justify the expense of retaining counsel to assert its claim. And if Irving Trust's real concern is that it may be subject to suit by Arab Bank, then its obvious remedy is to interplead Arab Bank under Rule 22 of the Federal Rules of Civil Procedure.

Canadian's purpose in seeking this injunction is to preserve the status quo pending trial of the significant legal and factual issues discussed above. This is not a case of a preliminary injunction which in effect grants permanent relief in advance of trial as in the case of a mandatory injunction. Given the prejudice to Canadian of a payment by Irving Trust, and the serious legal questions which have been raised, Irving Trust should not be permitted to render an eventual trial of this matter moot or futile by altering the present status quo.

POINT III

THE FACT THAT ARAB BANK HAS PAID  
THE PROCEEDS OF THE LETTER OF  
CREDIT TO THE STEEL MILL DOES NOT  
DISPOSE OF THE ISSUES AS TO CANADIAN'S  
RIGHT TO A PRELIMINARY INJUNCTION

As noted in the statement of facts, supra the exact date on which Arab Bank made payment to the beneficiary is not known. However, it appears that Arab Bank was on notice of the restraining order issued by this Court as of August 23, 1976. [See Irving Trust's telex dated August 23, 1976, the sense of which was repeated in its telex on August 26, 1976. (Add.14,17)]. The question arises therefore whether Arab Bank made payment to the Steel Mill after having received notice of the order restraining Irving Trust from making payment under the Letter of Credit. If so, then it is clear that Arab Bank made such payment at its own risk.

It is also important to note that Irving Trust apparently never informed Arab Bank of the temporary restraining order granted by Judge Goettel on August 11, 1976 which remained in effect until the morning of August 20, 1976 when Judge Werker signed an order denying Canadian's motion for a preliminary injunction. Further, by Canadian's counter-proposed "Order Denying Preliminary Injunction" which was served on attorneys for Irving Trust on the afternoon of August 18, Canadian informed Irving Trust of its intention to appeal from any order of Judge Werker denying Canadian's preliminary injunction.

It is therefore surprising that, in Irving

Trust's telex of August 19 to Arab Bank, Tripoli (Add.12 ) Irving Trust should state "we have received your documents which conform to terms credit and we stand ready to honor same\*\*\*", without making any reference to Judge Goettel's restraining order which was still in effect. Nor did Irving Trust inform Arab Bank of Judge Werker's temporary stay pending appeal of his order on August 20, 1976.

If Arab Bank paid out the proceeds of the Letter of Credit during the period between August 11 and August 23 when it appears that it had not been informed of any restraining order against Irving Trust, Irving Trust has only itself to blame for its failure to keep Arab Bank apprised of the restraining order and the risks that Arab Bank would be running of not being reimbursed by Irving Trust.

In any case, in view of the issues discussed above in Point II concerning the effect of Irving Trust's voiding of its election not to extend the letter of credit, a significant factual issue to be resolved at the trial of this action concerns when notice of such voiding was received by Arab Bank and when the alleged payment was actually made to Steel Mill.

Nor does the fact of payment by Arab Bank moot the issue whether such payment was properly made in view of the issues raised above concerning (a) whether Arab Bank was a confirming bank, (b) if so whether negotiation of the draft was included within the terms of the confirmation and (c) whether the documents presented by the Steel Mill to Arab Bank conformed to the terms of the letter of credit.

FINAL POINT

For all of the reasons discussed above, we respectfully submit that this Court should reverse the order of Judge Werker dated August 20, 1976 and, on the basis of its own review of the facts, as contained in the Appendix and Addenda hereto, grant a preliminary injunction against Irving Trust restraining it from honoring any draft which is drawn under its Letter of Credit and is predicated on an alleged election by Irving Trust not to extend the expiration date of the Letter of Credit beyond September 24, 1976 pending the trial of this matter.

Dated: New York, New York  
September 30, 1976

Respectfully submitted,

KIRLIN, CAMPBELL & KEATING  
Attorneys for Plaintiff-Appellant

David A. Nourse  
Jacques L. Jones  
of Counsel

**ADDENDA**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

-----x  
CANADIAN TRANSPORT COMPANY, a division of :  
MacMILLAN BLOEDEL (ALBERNI) LIMITED,

AFFIDAVIT

Plaintiff-Appellant, :

Docket No. 76-7401

-against- :

IRVING TRUST COMPANY, :

Defendant-Appellee. :

-----x  
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

HERBERT D. ZORN, being duly sworn, deposes and  
says:

1. I am an Assistant Secretary of Irving Trust  
Company ("Irving"), the defendant-appellee herein, and I  
make this affidavit in opposition to plaintiff-appellant's  
motion for a stay pending an appeal.

2. Annexed hereto as exhibits are copies of  
cables received and sent by Irving since the submission  
of this matter to the District Court on plaintiff-  
appellant's application for a preliminary injunction.

Add 1

**Exhibit A - cable from Arab Bank Limited to Irving dated July 29, 1976; received by Irving, August 2, 1976.**

**Exhibit B - cable from Irving to Mariners Shipping Agency and Arab Bank Limited, dated August 2, 1976.**

**Exhibit C - cable from Irving to Arab Bank Limited, dated August 11, 1976.**

**Exhibit D - cable from Irving to Arab Bank Limited, dated August 12, 1976.**

**Exhibit E - cable from Irving to Arab Bank Limited, dated August 18, 1976.**

**Exhibit F - cable from Irving to Arab Bank Limited, Amman, Jordan, dated August 18, 1976.**

**Exhibit G - cable from Irving to Arab Bank Limited, Amman, Jordan and Arab Bank Limited, Tripoli, Lebanon, dated August 19, 1976.**

**Exhibit H - cable from Arab Bank Limited, Amman, Jordan, to Irving, dated August 19, 1976.**

**Exhibit I - cable from Irving to Arab Bank Limited, Amman, Jordan, dated August 23, 1976.**

**Exhibit J - cable from Arab Bank Limited, Amman, Jordan, to Irving, dated August 23, 1976.**

**Exhibit K - cable from Irving to Arab Bank Limited, Amman, Jordan, dated August 26, 1976.**

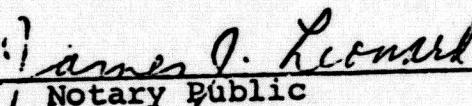
Exhibit L - cable from Arab Bank Limited, Amman,  
Jordan, to Irving, dated September 5, 1976.

Exhibit M - cable from Arab Bank Limited, Amman,  
Jordan, to Irving, dated September 7, 1976.

3. Also annexed hereto as Exhibit N is the draft  
of Lebanon Steel Mill Company drawn on Irving under letter  
of credit Number 012556 payable to Arab Bank Limited, to-  
gether with the endorsement of Arab Bank Limited on the  
draft and a statement accompanying the draft.

  
Herbert D. Zorn

Sworn to before me this  
9th day of September, 1976.

  
\_\_\_\_\_  
James J. Leonard  
Notary Public

JAMES J. LEONARD  
Notary Public, State of New York  
No. 24-2312465  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1977

FROM ARAB BANK LTD.

TRIPOLI

JULY 29- AUG 2 76 LH

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B  
L  
E

ZCZC IT025 AUW288 SYA650 230

UWNY CO SYDX 083

TRIPOLI VIA HOMS SYRIA 83/80 29 1030

IRVINGBANK  
NEWYORK

ARAB BANK LTD.  
533 TESTED BY BANKARABI TRIPOLI LEBANON STOP YOUR CABLE 21 JULY  
ARAB BANK LTD.  
TO BANKARABI AMMAN REYOUR L/C 012556. STOP AS YOU ELECTED NOT  
TO EXTEND L/C PLEASE CREDIT DOLLARS 225000 VALUE 28TH INSTANT  
TO OUR BEIRUT ACCOUNT WITH YOU STOP DRAFT FOR THIS AMOUNT  
ACCOMPANIED BY SIGNED STATEMENT AS PER CREDIT TERMS IS BEING SENT  
TO YOU VIA REGISTERED AIRMAIL STOP CABLE ADVICE US AT OUR  
ADDRESS ARAB BANK LTD.  
BANKARABI TRIPOLI LEBANON VIA HOMS SYRIA

COL 533 21 012556 225000 28TH

BEST COPY AVAILABLE

EXHIBIT A

Add 4

OFFICE MATH 1/C 012556	DEPARTMENT NAME AND EXPENSE NUMBER L/C ISSUING 012556	DATE 8/2/76
---------------------------	--	----------------

MARINER'S SHIPPING AGENCY  
53-55 AKTI MIAOLLI  
PIRAEUS GREECE

<input type="checkbox"/> CHARGED ACCOUNT	<input type="checkbox"/> We have deducted the cost of this cable from the proceeds of payment.
<input type="checkbox"/> BILLED CUSTOMER	
ACCOUNT NUMBER 72-013-134	

FROM  
MESSAGE  
TO →

ARAB BANK LTD  
TRIPCLI LIBANON  
VIA HOMS SYRIA

TELE NUMBER

YOURS JULY 29 RECEIVED AUGUST 2 RE OUR L/C 012556 STOP  
 REFER OUR MESSAGE JULY 29 TO YOUR AMMAN JORDAN READING  
 QUOTE PLEASE CONVEY FOLLOWING TO RESPONSIBLE AREA NOW  
 HANDLING BUSINESS YOUR TRIPCLI LEBANON OFFICE READING  
 QUOTE REFER OUR L/C 012556 AND OUR CABLE JULY 21 FOR  
 \$225,000.00 FAVOR LEBANON STEEL MILL STOP OUR CREDIT  
 AMENDED DRAFTS MUST NOW BE PRESENTED TO US NOT LATER  
 THAN SEPTEMBER 24 1977 STOP ACCORDINGLY PLEASE VOID  
 OUR MESSAGE OF JULY 21 1976 ADVISING EXPIRY DATE OUR  
 CREDIT SEPTEMBER 24 1976 AND ALL TERMS AND CONDITIONS  
 UNCHANGED UNQUOTE AS WELL OUR REGISTERED LETTER SAME  
 DATE UNDER REGISTRY NUMBER 7121-356 ALSO SENT TO YOUR  
 AMMAN HEAD OFFICE STOP ACCORDINGLY PLEASE ADVISE IF  
 YOU NOW WISH TO WITHDRAW YOUR REQUEST FOR PAYMENT STOP  
 THIS CREDIT NOT COMPLIED WITH AND  
 ADDITIONALLY/CREDIT DOES NOT ALLOW FOR CABLE REIMBURSE-  
 MENT AND AS SUCH YOUR DRAWING DOES NOT COMPLY WITH CREDIT

BEST COPY AVAILABLE

-MORE-

EXHIBIT B

L/C DEPT.  
S. & D'ANDREA  
8/12/76

ORIGINATING DEPARTMENT COPY

Add 5

Irving Trust A Charter  
Company New York Bank  
WIRE SERVICES CENTER  
One Wall Street, New York, N.Y. 10015



PAGE \_\_\_\_\_ OF \_\_\_\_\_

FROM

OFFICE

MAIN L/C 012555

FOR  
MESSAGE  
TO

DEPARTMENT NAME AND EXPENSE NUMBER

L/C ISSUING #462

DATE

8/2/76

ARAB BANK LTD

TRIPOLI LIBANON

VIA HONS SYRIA

TERMS STOP ADDITIONALLY AS CABLE RECEIVED ONLY

AUGUST 2 1976 WE CANNOT EFFECT PAYMENT TO YOU VALLE JULY 28

STOP IN VIEW FOREGOING PLEASE CABLE REPLY URGENTLY IF YOU

WISH TO WITHDRAW YOUR PAYMENT REQUEST FOR \$225,000.00

TO ATTN IMPORT ISSUING SECTION L/C

Add 6

ORIGINATING DEPT. G

OFFICE L/C 012556	DEPARTMENT NAME AND EXPENSE NUMBER L/C ISSUING 7462	DATE 8/11/76
----------------------	--	-----------------

RESERVES FOR EXPENSES CURRENT CABLES  
ISSUING DEPT 462

CHARGED ACCOUNT

We have deducted the cost of  
this cable from the proceeds  
of payment.

BILLED CUSTOMER  
ACCOUNT NUMBER

TELEX NUMBER

FOR MESSAGE TO

ARAB BANK LTD  
TRIPOLI LEBANON  
VIA HOMS SYRIA

cc [ATTN SAAD SMAILAH, MANAGER FOREIGN DEPT PLEASE REFER OUR  
TELEX AUGUST 2 REFERRING YOURS JULY 29 CONCERNING OUR L/C  
012556 FAVOR LEBANON STEEL MILL STOP PLEASE ADVISE IF YOU  
HAVE DECIDED TO WITHDRAW YOUR REQUEST FOR PAYMENT UNDER  
CREDIT AS WE HAVE EXTENDED CREDIT VALIDITY TO SEPTEMBER 24,  
1977 STOP REPLY ATTN: IMPORT ISSUING SECTION L/C GROUP]

*Sent it up 9/1  
S.T.*

EXHIBIT C

7462 DEPT  
J. A. D'ANDREA  
AUG 11 1976

Add 7

ORIGINATING DEPARTMENT COPY

OFFICE

MAIL-C:012556

DEPARTMENT NAME AND EXPENSE NUMBER

L/C ISSUING 662

DATE

9-8-12/76

RESERVES FOR EXPENSES CURRENT  
 CURRENT CABLES  
 ISSUING DEPT. 462

 CHARGED ACCOUNT We have deducted the cost of  
 this cable from the proceeds  
 of payment. BILLED CUSTOMER  
 ACCOUNT NUMBER

ON MESSAGE →  
 ARAB BANK LTD.  
 TRIPOLI LEBANON  
 VIA HOMS SYRIA

TELEX NUMBER

WE REPEAT OURS YESTERDAY READING UKQUOTE ATTN SAAD SWAILAH  
 RANGER FOREIGN DEPT PLEASE REFER OUR TELEX AUGUST 2 REFERRING  
 YOURS JULY 29 CONCERNING OUR LC 012556 FAVOR LEBANON STEEL MILL  
 STOP PLEASE ADVISE IF YOU HAVE DECIDED TO WITHDRAW YOUR  
 REQUEST FOR PAYMENT UNDER CREDIT AS WE HAVE EXTENDED CREDIT  
 VALIDITY TO SEPTEMBER 24 1977, STOP REPLY CATN IMPORT  
 ISUI<<ISSUING DSECTION L/C GROUP LYCQUOTE STOP PLEASE ADVISE  
 STATUS SOONEST VIA AUTHENTICAL TELEX

## EXHIBIT D

ON TO LYC DERT  
 V. A. D'ANDREA  
 AUG 12 1976

Add 8

ORIGINATING DEPARTMENT COPY

OFFICE

PATH L/C 012556

DEPARTMENT NAME AND EXPENSE NUMBER

L/C ISSUING 462

DATE

8/18/76

RESERVES FOR EXPENSES CURRENT  
CABLES L/C ISSUING DEPT. 462

 CHARGED ACCOUNT BILLED CUSTOMER  
ACCOUNT NUMBER
 We have deducted the cost  
of this cable from the proceeds  
of payment.

FOR  
MESSAGE  
TO →

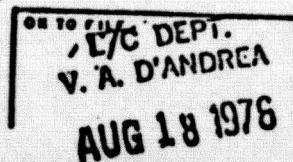
ARAB BANK LTD.  
TRIPOLI LEBANON  
VIA HOMS SYRIA

TELEX NUMBER

ATTN MR. SAAD SWAILAH REFER OUR UNGM<<UNANSWERED TELEXES  
AUGUST 2 AUGUST 11 AND AUGUST 12 RE OUR L/C 012556 FAVOR  
LEBANON STEEL MILL FOR \$225,000.00 STOP INVIEW OUR EXTENSION  
L/C TO SEPTEMBER 24 1977 AND REINSTATEMENT AUTOMATIC EXTENSION  
CLAUSE PLEASE AUTHORIZE US BY AUTHENTICATED TELEX/CABLE  
URGENTLY TO CANCEL YOUR REQUEST FOR PAYMENT CONTAINED  
YOURS JULY 29 STOP REPLY ATTN IMPORT ISSUING SECTION L/C  
GROUP SOONEST

## EXHIBIT E

DR



ORIGINATING DEPARTMENT COPY

Add 9

XXXXXX

OFFICE ATTN L/C 012556	DEPARTMENT NAME AND EXPENSE NUMBER L/C TSC/TYC 162	DATE 8/11/74
---------------------------	---	-----------------

RESERVES FOR EXPENSES CURRENT  
CABLES L/C ISSUING DEPT 462

CHARGED ACCOUNT

We have deducted the cost of  
this cable from the proceeds  
of remt.

BILLED CUSTOMER

AL UNIT NUMBER

X  
TELEX NUMBER

TO  
MESSAGE  
TO ARAS BANK LTD.  
ARMAN JORDAN

PLEASE CONVEY FOLLOWING MESSAGE TO RESPONSIBLE AREA NOW  
HANDLING AFFAIRS YOUR TRIPOLI LEBANON OFFICE READING QUOTE  
ATTN MR. SAAD SWAILAM PLEASE REFER TO OUR MESSAGES OF  
AUGUST 2 AUGUST 11 AND AUGUST 12 REGARDING OUR L/C 012556  
FAVOR LEBANON STEEL MILL FOR \$225,000.00 <<  
FAVOR LEBANON STEEL MILL FOR \$225,000.00 ALL AVOCADO  
TELEXES SENT TO YOU IN ACCORDANCE YOURS JULY 29 WHEREIN YOU  
REQUEST US TO CONTACT YOU VIA WOME SYRIA STOP ADDITIONALLY  
REFER OURS TODAY SENT DIRECT TO YOU VIA WOME SYRIA READING  
QUOTE ATTN MR. SAAD SWAILAM REFER OUR UNANSWERED TELEXES  
AUGUST 2 AUGUST 11 AND AUGUST 12 RE OUR L/C 012556 FAVOR  
LEBANON STEEL MILL FOR \$225,000.00 STOP INVIEW OUR EXTENSION  
L/C TO SEPTEMBER 24 1977 AND REINSTATEMENT AUTOMATIC EXTENSION  
CLAUSE PLEASE AUTHORIZE US BY AUTHENTICATED TELEX/CABLE  
URGENTLY TO CANCEL YOUR REQUEST FOR PAYMENT CONTAINED YOURS  
JULY 29 STOP REPLY ATTN IMPORT ISSUING SECTION L/C GROUP

BEST COPY AVAILABLE

1<-MORE-

3129005-2  
AP

EXHIBIT F	AUG 13 1974
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Add 10

ORIGINATING DEPARTMENT COPY

XXXXXX

Company New York Bank  
WIRE SERVICES CENTER  
One Wall Street, New York, N.Y. 10015

PAGE 2 OF 2

FROM

OFFICE

MATH L/C 012556

DEPARTMENT NAME AND EXPENSE NUMBER

L/C ISSUING 462

DATE

3/13/76

ON MESSAGE

ARAB BANK LTD.

AMIAN JORDAN

SOONEST UNQUOTE STOP PLEASE ADVISE STATUS URGENTLY UNQUOTE

3430/00  
(3-76)

3430/00  
3-76  
MAY 10 1976

(P)

DR

3430/00 (3-76)

Add 11

ORIGINATING DEPT. CO

XX

OFFICE <u>AIM L/C 012556</u>	DEPARTMENT NAME AND EXPENSE NUMBER <u>L/C ISSUING # 482</u>	DATE <u>8/19/75</u>
---------------------------------	--	------------------------

ARAB BANK LTD.  
AYMAN JORDAN  
A/C FOR YOUR TRIPOLI LEBANON

<input type="checkbox"/> CHARGED ACCOUNT	<input type="checkbox"/> We have deducted the cost of this cable from the proceeds of payment.
<input type="checkbox"/> BILLED CUSTOMER	
ACCOUNT NUMBER	
03314 550	

ARAB BANK LTD.  
TRIPOLI LEBANON  
VIA HOMS SYRIA

TELEX NUMBER

ATTN MR. SAAD SWAILAN REFER OURS AUGUST 2, AUGUST 11, AUGUST 12, AND AUGUST 13 REGARDING L/C 012556 FAVOR LEBANON STEEL MILL TRIPOLI FOR 3225,000.00 STOP HAVE RECEIVED YOUR DOCUMENTS WHICH CONFORM TO TERMS CREDIT AND WE STAND READY TO HONOR SAME HOWEVER IN VIEW OUR EXTENSION L/C TO SEPTEMBER 24 1977 PLEASE INSTRUCT URGENTLY IF YOU WISH US TO RETURN DRAWING TO YOU VIA TARTOUS SYRIA STOP PLEASE URGENTLY ADVISE TO ATTN IMPORT ISSUING L/C GROUP

EXHIBIT G



Add 12

ORIGINATING DEPARTMENT COPY

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RCA 19 06550

232241C ITNY UR

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1230 ARAB NK JO

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FROM: ARAB BANK, GENERAL MANAGEMENT/ AMMAN

TO : IRVING TRUST COMPANY/ NEW YORK

DTE : 19TH AUG 1976

RYT OF 18TH INSTANT SENT TO US FOR ONWARD TRANSMISSION TO OUR  
TRIPOLI LEBANON BRANCH REGARDING YOUR L/C 012556 FAVOUR  
LEBANON STEEL MILL FOR US DLRS 225,000.-

SINCE ALL COMMUNICATIONS WITH LEBANON ARE DISRUPTED AT PRESENT  
WE SHALL TRY TO SEND SUBJECT MESSAGE TO OUR TRIPOLI LEBANON  
BRANCH WITH THE FIRST PASSENGER IF AVAILABLE. WE WILL REVERT  
TO THIS MATTER WHEN WE RECEIVE THEIR REPLY.

GENERAL MANAGER

1976 AUG 19 7:54

946000

ITC MACH.RM.

EXHIBIT H

232241C ITNY UR

1230 ARAB NK JO

Add 13

OFFICE MAIN	012556	DEPARTMENT NAME AND EXPENSE NUMBER L/C 462	DATE 8/23/76
ARAB BANK LTD., AMMAN, JORDAN A/C YOUR TRIPOLI LEGATION		<input checked="" type="checkbox"/> CHARGED ACCOUNT <input type="checkbox"/> BILLED CUSTOMER ACCOUNT NUMBER 03-314-553	<input type="checkbox"/> We have deducted the cost of this cable from the proceeds of payment.

FOR MESSAGE TO →  
ARAB BANK LTD.,  
AMMAN, JORDAN

TELEX NUMBER

PLEASE CONVEY FOLLOWING REACHMESSAGE TO RESPONSIBI<<<

(10) PLEASE CONVEY FOLLOWING MESSAGE TO RESPONSIBLE AREA NOW  
HANDLING AFFAIRS YOUR TRIPOLI LEGATION OFFICE READING  
QUOTE REFER YOUR DRAWING JULY 23, 1976 \$225,000.00  
RECEIVED BY US AUGUST 18, 1976 UNDER OUR L/C 012556  
FAVOR LEGATION STEEL MILL STOP PLEASE BE ADVISED THAT  
WE HAVE BEEN ENJOINED FROM EFFECTING PAYMENT TO YOU  
UNDER A TEMPORARY RESTRAINING ORDER ISSUED BY THE  
UNITED STATES COURT OF APPEALS FOR THE SOUTHERN DISTRICT  
OF NEW YORK IN A SUIT BROUGHT ABOUT BY CANADIAN TRANSPORT  
COMPANY DIVISION OF FRACTILLAN SLOEDEL (ALBERNI) LIMITED  
STOP THE RELATIVE HEARING TO DETERMINE WHETHER THIS  
RESTRAINING ORDER WILL BE EITHER DENIED OR CONVERTED TO  
A PERMANENT INJUNCTION IS SCHEDULED FOR SEPTEMBER 14, 1976  
UPON RECEIPT OF DETERMINATION OF THE UNITED STATES COURT  
WE WILL REVERT STOP PLEASE BE ADVISED THAT YE HAVE TAKEN

-MORE-

EXHIBIT

OK TO FILE	L/C DEPT.
	V. R. LINDNER
AUG 24 1976	

ORIGINATING DEPARTMENT COPY

Add 14

Irving Trust & Guaranty  
Company - New York Bank  
WIRE SERVICES CENTER  
One Wall Street, New York, N.Y. 10013

PAGE 2

FROM	OFFICE	DEPARTMENT NAME AND EXPENSE NUMBER	DATE
FOR MESSAGE TO	MAIN 012556	L/c 462	8/23/78

ARM BANK LTD.,

AMMAN, JORDAN

STEPS TO P. OPPOSE THIS INJUNCTION HOWEVER YOU MAY WISH  
TO CONSIDER CONSULTING YOUR OWN COUNSEL IN NEW YORK AS  
WELL AS ADVISING LEBANON STEEL MILL OF THIS MATTER  
~~AND~~ WHO MAY ALSO WISH TO CONSIDER RETAINING THEIR OWN  
COUNSEL IN NEW YORK FOR THIS PROCEEDING STOP IN MEANTIME  
PLEASE URGENTLY ADVISE IF YOU WISH US TO RETURN TO YOU  
YOUR DRAWING JULY 23 FOR \$225,000.00 SINCE WE EXTENDED  
VALIDITY OUR CREDIT TO SEPTEMBER 24, 1977 STOP PLEASE  
URGENTLY TO ATT: IMPORT ISSUING SECTION L/C GROUP UNQUOTE ]

L/C DEPT.  
V. A. D'ANDREA  
AUG 23 1978

Add 15

ORIGINATING DEPT.

AUG 23, 1976

134336

40978

FROM ARAB BANK, LTD GENERAL MANAGEMENT/ AMMAN  
TO/ IRVING TRUST CO, NEW YORK

WE PASS ON TO YOU THE FOLLOWING MESSAGE FRO... OUR TRIPOLI-LEBANON  
BRANCH WHOSE TELEX IS DISRUPTED AT PRESENT.

QUOTE:

HERE IS: ARAB BANK LTD, TRIPOLI-LEBANON

TO : IRVING TRUST CO, NEW YORK

AUGUST 13, 1976

TOP URGENT

8/13/76

Reimb

com

WE CONFIRM TO YOU OUR CABLE OF 23TH JULY 1976 RE YOUR L/C 012556  
AND WHICH READS AS FOLLOWS:

ARAB BANK LTD

533 TESTED BY BANKARABI TRIPOLI LEBANON STOP YOUR CABLE 21JULY  
ARAB BANK LTD TO BANKARABI AMMAN REYOUR L/C 012556 STOP AS YOU ELECTED NOT TO  
EXTEND L/C PLEASE CREDIT DLRS 225000 VALUE 28TH INSTANT TO OUR  
BEIRUT ACCOUNT WITH YOU STOP DRAFT FOR THIS AMOUNT ACCOMPANIED  
BY SIGNED STATEMENT AS PER CREDIT TERMS IS BEING SENT TO YOU VIA  
ARAB BANK LTD REGISTERED AIRMAIL STOP CABLE ADVISE US AT OUR ADDRESS BANKARABI  
TRIPOLI LEBANO. VIA HOS SYRIA STOP  
PLEASE TELEX IMMEDIATELY OUR GENERAL MANAGEMENT AMMAN:

BEST COPY AVAILABLE

1) IF DOCUMENTS RECEIVED PLEASE ADVISE WHEN AMOUNT CREDITED.

2) IF NOT RECEIVED YET PLEASE ADVISE. MEANWHILE WE ARE SENDING  
DUPLICATES VIA AMMAN REGISTERED AIRMAIL.

EXHIBIT J

Add 16

OFFICE <b>MAIN L/C 012556</b>	DEPARTMENT NAME AND EXPENSE NUMBER <b>L/C CORR 2456</b>	DATE <b>26 8/27/76</b>
----------------------------------	--	----------------------------

**ARAB BANK LTD  
AMMAN JORDAN**

**A/C YOUR TRIPOLI OFFICE**

CHARGED ACCOUNT

BILLED CUSTOMER

ACCOUNT NUMBER

**03 314 553**

We have deducted the cost of  
this cable from the proceeds  
of payment.

FOR  
MESSAGE  
TO → **ARAB BANK LTD  
AMMAN JORDAN**

TELEX NUMBER

ATTENTION GENERAL MANAGEMENT REYOUR TELEX 23RD RE-  
LAYERED TO US ON BEHALF YOUR TRIPOLI LEBANON OFFICE  
UNDER TEST NUMBER 533/DAT<sup>E</sup> OF AUGUST 13  
CONCERNING OUR L/C 012556  
THEIR T4/75 STOP ON AUGUST 23 SENT FOLLOWING TELEX  
TO YOU FOR TRANSMISSION TO YOUR TRIPOLI QUOTE PLEASE  
CONVEY FOLLOWING MESSAGE TO RESPONSIBLE AREA NO4  
HANDLING AFFAIRS YOUR TRIPOLI LEBANON OFFICE READING  
QUOTE REFER YOUR DRAWING JULY 23 1976 \$225,000.00  
RECEIVED BY US AUGUST 18 1976 UNDER OUR L/C 012556  
FAVOR LEBANON STEEL MILL STOP PLEASE BE ADVISED  
THAT WE HAVE BEEN ENJOINED FROM EFFECTING PAYMENT TO  
YOU UNDER A TEMPORARY RESTRAINING ORDER ISSUED BY  
THE UNITED STATES COURT OF APPEALS FOR THE SOUTHERN  
DISTRICT OF NEW YORK IN A SUIT BROUGHT ABOUT BY  
CANADIAN TRANSPORT COMPANY DIVISION OF MACMILLAN  
BLOEDEL (ALBERNI) INC  
BLOEDEL (ALBERNI) LIMITED STOP THE RELATIVE HEARING

**BEST COPY AVAILABLE**

-MORE-

**AUG 25 1976**

**L/C DEPT.  
A QDSD**

OK TO FILE

**EXHIBIT K**

**Add 17**

**ORIGINATING DEPARTMENT COPY**

XXXXX

FROM

OFFICE

MAIN L/C 012556

WIRE SERVICES CENTER  
One Wall Street, New York, N.Y. 10015PAGE 2 OF

FOR MESSAGE TO

ARAB BANK LTD

DEPARTMENT NAME AND EXPENSE NUMBER  
L/C CORR # 466DATE 26  
8/2/76

AMMAN JORDAN

TO DETERMINE WHETHER THIS RESTRAINING ORDER WILL BE EITHER DENIED OR CONVERTED TO A PERMANENT INJUNCTION IS SCHEDULED FOR SEPTEMBER 14 1976 UPON RECEIPT OF DETERMINATION OF THE UNITED STATES COURT WE WILL REVERT STOP PLEASE BE ADVISED THAT WE HAVE TAKEN STEPS TO OPPOSE THIS INJUNCTION HOWEVER YOU MAY WISH TO CONSIDER CONSULTING YOUR OWN COUNSEL IN NEW YORK AS WELL AS ADVISING LEBANON STEEL MILL OF THIS MATTER WHO MAY ALSO WISH TO CONSIDER RETAINING THEIR OWN COUNSEL IN NEW YORK FOR THIS PROCEEDING STOP IN MEANTIME PLEASE URGENTLY ADVISE IF YOU WISH US TO RETURN TO YOU YOUR DRAWING JULY 23 FOR \$225,000.00 SINCE WE EXTENDED VALIDITY OUR CREDIT TO SEPTEMBER 24, 1977 STOP PLEASE URGENTLY TO ATT: IMPORT ISSUING SECTION L/C GROUP UNQUOTE IT APPEARS THAT THE EIGHT TELEXES TRANSMITTED THRU YOUR HOMS SYRIA BRANCH AND YOURSELVES SINCE JULY 29 1976 HAVE NOT REACHED THEM STOP WOULD APPRECIATE YOUR ASSISTANCE IN HAVING ABOVE QUOTED MESSAGE DELIVERED TO YOUR TRIPOLI BRANCH AS REPLY URGENTLY REQUIRED

3430/00  
(8-76)

32

Add 18

ORIGINATING DEPT. C

09/05/76 0427 EDT

A420268 IRV UI

1230 ARABNK JO

5/9/1976

FROM ARAB BANK, H.O., AMMAN  
TO IRVING TRUST CO NYK

SUPERIOR  
FILE COPY OF MESSAGE REFERRED TO IS PRESENTLY  
NOT IN CABLE DEPT FILES. REFER TO YOUR ACTION  
COPY OR YOUR SUPERVISOR WITHOUT DELAY.

4/CC X 18430  
CORR

WE REPEAT OUR TELEX OF 4.9.76 TO THE ATTENTION OF SERVICE  
DESK QUOTE:

RYT DATED 2ND INSTANT REFERING TO YOUR TELEX 26TH AUGUST  
CONCERNING YOUR LC 0/2556 FAVOUR LEBANON STEEL MILL.

WE ARE UNABLE TO CONTACT OUR TRIPOLI LEBANON BRANCH AND WE  
ARE EXPERIENCING DIFFICULTY IN DELIVERING MESSAGES. HOWEVER  
WE ARE ENDEVOURING TO SEND SUBJECT MESSAGE TO OUR TRIPOLI  
LEBANON BRANCH WITH THE FIRST PASSENGER REGARDS.

UNQUOTE.

GENERAL MANAGEMENT

BEST COPY AVAILABLE

A420263 IRV UI

WELL RCVD PLST

1230 ARABNK JO.....

EXHIBIT L

Add 19

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3

2322410 ITNY UK  
RCA 07 07520  
2322410 ITNY UK  
1230 ARABNK JO

7/9/1976

E  
FROM ARAB BANK, H.O. AMMAN  
TO IRVING TRUST CO. NEW YORK

RE PASS ON TO YOU THE FOLLOWING MESSAGE FROM OUR TRIPOLI LEBANON  
BRANCH WHOSE TELEX IS DISRUPTED AT PRESENT.

QUOTE:

HERE IS: ARAB BANK LTD TRIPOLI, LEBANON  
TO : IRVING TRUST CO. NEW YORK

AUGUST 26TH, 1976

A  
TOP URGENT.

3  
RE CONFIRM TO YOU OUR CABLE OF 25TH AUGUST 1976 REYOUR L/C  
012556 AND WHICH READS AS FOLLOWS:

602 TESTED BY BANKARABI TRIPOLI LEBANON 25TH AUGUST STOP  
YOUR CABLE 12TH INSTANT REYOUR L/C 012556 FAVOUR LEBANON STEEL  
MILL CO FOR DLRS 125000 STOP WE ALREADY PAID BENEFICIARIES  
AMOUNT AS PER YOUR CABLE 21ST JULY 1976 ELECTING NOT TO EXTEND  
L/C STOP BENEFICIARIES REFUSED YOUR PROPOSAL FOR NEW EXTENSION  
AND ARE INSISTING ON THEIR DECISION IN THIS RESPECT STOP PLEASE  
CREDIT SAME AMOUNT VALUE 26TH JULY 1976 TO OUR BEIRUT BRANCH  
ACCOUNT WITH YOUR COCOSLEVES IN OUR FAVOUR UNDER TESTED CABLE  
ADVICE TO US AND SAME TELEX ADVICE TO OUR GENERAL MANAGEMENT  
AMMAN STOP

UNQUOTE

2322410 ITNY UK  
1230 ARABNK JO.....3

EXHIBIT M

Add 20

NOTIFY CABLE AND TELL THEM DEPT. IMMEDIATELY  
QUOT DISCHARGES HEADING OUT OR NOT CHARGED OUT.

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00270€

NOTIFY CABLE AND TELL THEM DEPT. IMMEDIATELY  
QUOT DISCHARGES HEADING OUT OR NOT CHARGED OUT.



# ARAB BANK LIMITED

TRIPOLI - LEBANON

LIST OF BANKS NO. 8 R. C. 329 - BEIRUT

990-C 76

CIRGAD

P.O. BOX: 379  
CABLE ADDRESS: BANKARABE  
TELEPHONE: 628120-21  
628063-64  
624122

TRIPOLI, LEBANON JULY 28.76

IRVING TRUST COMPANY  
ONE WALL STREET  
NEW YORK N.Y. 10015

REF: Your L/C NO. 012556

Our ref. NO. T4/75

Accreditors: SAINT IOANNIS SHIPPING LTD  
MONROVIA

Beneficiaries: LEBANON STEEL MILL CO,  
TRIPOLI, LEBANON.

Dear Sirs;

We are in receipt of our General Management, Amman, copy of letter addressed to you NO. 3540/14/17/2 dated 25.7.76, and enclosed therein your cable of JULY 21, regarding your above mentioned L/C.

As per credit terms : please find enclosed a draft drawn on you by beneficiaries for US\$225000.00 and accompanied by their signed statement as requested in your aforesaid L/C.

Please credit amount of this draft value 28.7.76 , to our Beirut Branch account maintained with your goodselves, under cable advice to us at our address:

ARAB BANK LIMITED  
P.O.BOX NO. 97  
TARTOUS, SYRIA.

We thank you for a prompt answer.

Yours faithfully  
ARAB BANK LIMITED  
TRIPOLI, LEB. NO. 8

ENCL: DRAFT FCR US\$225000.00  
accompanying a statement.

MDR/la

IRVING TRUST COMPANY

TRIPOLI, LEBANON 28.7.1976

NEW YORK

Pay against this Cheque to the order of the ARAB BANK LIMITED

the sum of US DOLLARS TWO HUNDRED FIFTY FIVE

THOUSAND ONLY

U.S.	DOLLARS
\$	225000.00

THIS AMOUNT IS NEGOTIATED UNDER YOUR L/C NO. 012556 AND AS PER  
CREDIT TERMS.

SIGNED STATEMENT IS HEREBY ENCLOSED.

*G. J. Javed*  
Lebanon Steel Mill Co. S.A.L.  
President

Form No 111-25/2/69

Add 22

BEST COPY AVAILABLE

Pay to the order of  
EMERG MAIL COMPANY  
ARAB BANK LTD.

EE 2 PPA

**STATEMENT**

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We certify that the settlement of the damages incurred has not been arrived at and this liability is still due to us. The proceeds of this draft will be retained and used by us to meet any payments which we may be required to make.

In the event our liability is satisfied, we will refund to you the amount of this drawing less any amounts paid.

28 JUL 1975

*G. J. Gandy*  
Lebanon Steel Mill Co. S. A.  
President

dd 24

Add 24

A COPY CONTRACT COPY FOR

9600

VANCOUVER, B.C.

INTERNATIONAL DEPARTMENT

640 WEST HASTINGS STREET

VANCOUVER, CANADA

V6B 1P9

RECD IN



CANADIAN IMPERIAL

International Bank of Commerce, Vancouver, B.C.

Sept. 26, 1975

607 - 2 1975

CASH MGMT.

Irving Trust Company  
One Wall Street  
New York, New York  
U.S.A.

IN CONFIRMATION OF OUR TELEX DATED SEPT. 25/75

Attention: Import Issuer - Mr. Don Conzo

Dear Sirs:

On behalf of, and for account of MacMillan Bloedel Ltd. parent company of Canadian Transport Company, Limited we hereby issue in your favour for the account of Saint Ioannis Shipping Ltd., Monrovia c/o Mariners Shipping Agency S.A., 53-55 Akti Miaouli Piraeus, Greece, our Irrevocable Letter of Credit No. 9600/IMP/1510 for a sum or sums not exceeding in the aggregate U.S.\$225,000.00 (Two Hundred and Twenty-five Thousand 00/100 United States Dollars).

Payment under this credit will be effected by us to you subject to the following conditions:

1. Presentation to us of your signed and endorsed sight drafts drawn on the above office of this Bank making reference to the number and date of this credit and accompanied by:
2. Your signed statement reading as follows "The amount of our drawing represents the amount we have been called upon to pay to ARAB BANK LIMITED, Tripoli, Lebanon under our Letter of Credit No. 012556."
3. It is a condition of this credit that it shall automatically be extended for additional periods of one year from the present or any future expiration date hereof unless we inform you via authenticated telex/cable or registered letter dispatched by us at least 60 days prior to the present or any future expiration date that we elect not to extend it.

Drafts must clearly specify the number of this credit and be presented at this office not later than September 24, 1976.

This credit is subject to the Uniform Customs and Practice for documentary credits (1962 revision), International Chamber of Commerce Brochure No. 222.

We engage with you that drafts drawn under and in compliance with the terms of this credit will be duly honoured; it being understood that the Bank is obligated under this credit to the payment of monies only and that payment is limited to an aggregate total of U.S.\$225,000.00 (Two Hundred and Twenty-five Thousand 00/100 United States Dollars).

This undertaking is irrevocable on the part of the Canadian Imperial Bank of Commerce and will expire in Vancouver, British Columbia, Canada on September 24, 1976.

FOR CANADIAN IMPERIAL BANK OF COMMERCE

Authorized Signature

Countersigned

(Ex. B, Nourse Afidavit, 8/20/76) (Add. 25)

EXTRA COPY

INTERNATIONAL DEPARTMENT  
640 WEST HASTINGS STREET  
VANCOUVER, CANADA  
V6B 1R7



CANADIAN IMPERIAL  
BANK OF COMMERCE  
International Department, Vancouver, B.C.  
Oct. 3, 1975

Irving Trust Company  
One Wall Street  
New York, New York  
U.S.A.

ATTENTION: Mr. D'Andrea  
Letter of Credit Department

Dear Sirs:

We advise that our Irrevocable Letter of Credit No. 9600/IMP/1510 established September 26, 1975 in your favour for the account of Saint Ioannis Shipping Ltd., Monrovia c/o Marinors Shipping Agency S.A., 53-55 Akti Miacouli Piracus, Greece for U.S.\$225,000.00 is hereby amended as follows:-

Credit to be reimbursable by cable or negotiated by you at the counters of our New York Office.

All other terms and conditions remain unchanged.

Kindly attach this amendment to the relative Letter of Credit.

FOR CANADIAN IMPERIAL BANK OF COMMERCE

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Countersigned

(Ex. B, Nourse, Affidavit, 8/20/76)

(Add. 26)

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

----- x  
CANADIAN TRANSPORT COMPANY, a Division  
of MacMILLAN BLC DEL (ALBERNI)  
LIMITED,

Plaintiff-Appellant,  
-against-

IRVING TRUST COMPANY,

Defendant-Appellee.

----- x  
CERTIFICATE OF SERVICE  
OF BRIEF

WE HEREBY CERTIFY that two copies of the attached  
briefs were this date served on the following:

WINTHROP, STIMSON, PUTNAM & ROBERTS  
Attorneys for Defendant-Appellee  
Irving Trust Company  
40 Wall Street  
New York, NY 10005

Dated: New York, New York

October 1, 1976

KIRLIN, CAMPBELL & KEATING

By Charles N. Zander

Attorneys for Plaintiff-Appellant  
120 Broadway  
New York, NY 10005

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